

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jeremy Paul Kirby,

Case No. 0:22-cv-3155 (KMM)

Appellant,

v.

ORDER

Zakaria Mohamed,

Appellee.

This matter is before the Court on Jeremy Paul Kirby's appeal of the decision of U.S. Bankruptcy Court Judge Ridgway dated December 8, 2022 terminating the automatic stay imposed by 11 U.S.C. § 362(a).¹

Under Federal Rule of Bankruptcy Procedure 8009, Mr. Kirby, as the appellant, must either order a transcript of the proceedings he "considers necessary for the appeal . . . or file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript." Within 14 days, the appellee has the right to order a transcript of any proceedings he considers necessary for the appeal. Fed. R. Bankr. P. 8009(b)(3). In this appeal, Mr. Kirby filed an Application for Certification of Appeal, seeking to have this Court certify that his appeal is not frivolous and presents a substantial question, which would result in the United States paying the transcript costs on his behalf

¹ Mr. Kirby elected to have his appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel. [See Dkt. No. 1.]

pursuant to 28 U.S.C. § 753(f). [Dkt. No. 8.] Yet Mr. Kirby also filed a certification stating that he is not ordering a transcript of proceedings in this case. [Dkt. No. 9.]

The Court has doubts whether this is still a live issue. Judge Ridgway has already denied Mr. Kirby's similar request for a waiver of the transcript fee that Mr. Kirby submitted to the Bankruptcy Court. [See Order Denying Application, Dkt. No. 45, *In re Kirby*, Case No. 22-41692-MER (Bankr. D. Minn.)]. Nevertheless, this Court **DENIES as moot** Mr. Kirby's application currently pending before it. The Court has available to it a recording of Judge Ridgway's oral ruling from December 8, 2022 that will assist in its adjudication of this appeal, along with the party's filings. [See Dkt. Nos. 21, 29.]

The Court sets the following briefing schedule for this appeal: If Mr. Kirby wishes to move forward with this appeal, his opening brief is due on or by Friday, April 28. Mr. Mohamed must serve and file an answering brief within 30 days after service of the appellant's brief. Mr. Kirby may serve and file a reply brief within 14 days after service of the appellee's brief. If Mr. Kirby does not file a brief by the deadline established in this Order, this action may be dismissed for failure to prosecute.

I. Order

IT IS HEREBY ORDERED that:

1. Mr. Kirby's Application for Certificate of Appealability [Dkt. No. 8] is
DENIED as moot.
2. Mr. Kirby's second motion for an extension to file his appellate brief [Dkt.
No. 18] is **DENIED as moot.**
3. The parties are to comply with the new briefing schedule as set forth in
this order.

Date: April 17, 2023

s/ Katherine Menendez
Katherine Menendez
United States District Judge